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Letter dated 1 June 2004 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my predecessor's letter of 2 December 2003 (S/2003/1152). The Counter-Terrorism Committee has received the attached fourth report from India submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Alexander V. **Konuzin**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 28 May 2004 from the Permanent Representative of India to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

On behalf of the Government of India, I have the honour to refer to the letter dated 21 November 2003 from the Chairman of the Counter-Terrorism Committee and to submit herewith India's response to the Committee's questionnaire (see enclosure). The report also contains some introductory paragraphs explaining India's overall perspective on the compilation of national reports and the future work of the Committee.

The Government of India stands ready to provide the Committee with any further information that may be required.

(*Signed*) V. K. **Nambiar**

Enclosure*

GOVERNMENT OF INDIA
FOURTH REPORT TO THE COUNTER TERRORISM COMMITTEE

Introduction

India has firmly and consistently supported U.N. Security Council Resolutions 1373 and the work of the Counter Terrorism Committee (CTC). The three National Reports submitted by India to the CTC have attempted to give a comprehensive picture of steps taken by India to counter terrorism. Based on its own long experience of tackling terrorism the following points are being brought to the attention of the CTC with regard to India's perspective on the future work of the CTC and the compilation of National Reports. The Counter Terrorism Committee could look into some of these aspects in its future work.

- The emphasis in the CTC questionnaire and in its reporting requirement is on the legislative aspect. The operational, procedural and administrative aspects are also vital in devising an appropriate counter terrorism strategy. With the many complexities arising out of geography, large population, porous borders, lack of development in some sectors etc., anti-terrorism strategies in India are built on a combination of 'on the ground experience' and 'administrative practices'. Local intelligence and policing are key to efforts to prevent, where possible, and combat, where necessary, acts of terrorism. Our reports try to capture the efforts made in this regard but often it is not possible to give an exhaustive description of mechanisms available.

- Looking at the future, counter terrorism measures will require a multi-track approach in many fields. The skills and technologies involved may vary from country to country and within a country from region to region. In tackling issues relating to border controls, money transfers, control of small arms, forged documents, etc., law enforcement officials will have to devise strategies depending on the needs of the situation. The experiences of countries in different regions and at different stages of development are likely to yield different approaches. Counter terrorism measures, therefore, have to cater to regional, national as well as context and functional specificities.

- The linkages between organized crime and terrorism need to be addressed. India welcomes the steps taken by the UN in this direction, and the latest effort by the UN Office on Drugs and Crime in Vienna to compile reports by member-States.

- A number of UN Security Council Resolutions mandate taking action against individuals/entities listed in the relevant lists. However, the information supplied by the Counter Terrorism Committee/UN Security Council is often inadequate, as neither the details regarding the identity

* Annexes are on file with the Secretariat and are available for consultation.

of individuals nor the requisite information on the facts concerning offences committed by them is supplied to states to enable them to take effective action. In the absence of such information, the probability of attempts to trace, detect, identify or deter such persons yielding fruitful results is low. Adherence to the due process of law requires relevant information, including that of the alleged offences committed by persons/entities listed in these resolutions to enable effective measures to be taken against them.

The compilation of the measures employed in Counter Terrorism efforts, described in the reports submitted to the CTC, is undertaken after extensive inter-agency and inter-ministerial consultations involving administrative, technical and procedural matters. This exercise to revise and update the information being provided to the CTC is ongoing and will continue in an appropriate manner in the future.

1. Implementation measures

Effectiveness in the protection of the financial system

1.1 Effective implementation of sub-paragraph 1 (a) requires States to have in place effective executive machinery for preventing and suppressing the financing of terrorist acts. In this context, does India provide its administrative, investigative, prosecutorial and judicial authorities with specific training aimed at enforcing its laws in relation to:

- typologies and trends aimed at countering terrorist financing methods and techniques;

- techniques for tracing property, which represents the proceeds of crime or which is to be used to finance terrorism, with a view to ensuring that such property is frozen, seized or confiscated?

Please outline relevant programs and/or courses. What mechanisms/programs has India put in place to train its different economic sectors in the detection of unusual and suspicious financial transactions related to terrorist activities and in the prevention of the movement of illicit money?

India's administrative, investigative, and prosecutorial authorities are provided specific training in enforcing laws relating to countering terrorist financing and money laundering. Administrative, investigative and prosecutorial officers are deputed to reputed national institutes to upgrade their skills, methods, techniques, etc. in investigation of cases. Some of these institutes are:

(i) National Police Academy, Hyderabad;
(ii) Military Intelligence Training School and Depot, Pune;
(iii) Central Bureau of Investigation (CBI) Academy, Ghaziabad;
(iv) Intelligence Bureau Central Training School, New Delhi; and
(v) National Judicial Academy, Bhopal.

The Central Bureau of Investigation Academy, Ghaziabad, for example, provides training, inter alia, on (i) scientific aids to investigation, (ii) scientific interrogation techniques, and (iii) investigation of cyber crime.

The Military Intelligence Training School and Depot, Pune addresses intelligence dissemination and investigation of cases relating to terrorist activities including financing of terrorist activities.

Courses on money laundering including detection of unusual and suspicious financial transactions are also offered at the National Academy of Customs, Excise and Narcotics, Faridabad; the Reserve Bank of India Training College, Mumbai; and the Staff College of the State Bank of India (SBI), Hyderabad.

1.2 The CTC would appreciate receiving the main provisions of the Money Laundering Act (2003), together with an outline as to how the said provisions address the requirements of the Resolution.

The Prevention of Money Laundering Act (**PMLA**) has made the act of money laundering a criminal offence.

Under Section 3 of the **PMLA**:

> "Whosoever directly or indirectly attempts to indulge or knowingly assist or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property shall be guilty of the offence of money laundering."

The Act also provides a schedule which lists out offences under various acts.

Section 4 of the **PMLA** provides for punishment for the offence of money laundering with rigorous imprisonment for a period ranging from 3 to 7 years and fine, which may extend to Rupees 500,000 (approximately US$ 10,000).

Section 5 to 11 of the **PMLA** provide for attachment of property involved in money laundering, adjudication of such offences, confirmation of attachment of such properties and their ultimate confiscation on conclusion of a trial for any scheduled offence.

Sections 12 to 15 of the **PMLA** impose obligations on Banking Companies, Financial Institutions and Intermediaries to maintain proper records of all transactions, the nature and value of which may be prescribed and to furnish information of such transactions to the authority designated under the PMLA within a prescribed time and verification and maintenance of the records of the identity of all clients in such manner as may be prescribed.

Section 16 to 19 of the **PMLA** provides for the power of survey, search and seizure, search of persons, arrests etc.

Section 24 of the Act provides that the burden of proving that the proceeds of crime are untainted property shall be on the accused.

The Act also provides for establishment of the Appellate Tribunal and Special Courts for speedy disposal of cases under the **PMLA**.

Section 56 provides for agreements with foreign countries for enforcing the provisions of **PMLA** and exchange of information for the prevention of any attempts under **PMLA** or under corresponding law of the country with whom the agreement has been made or for the investigation of cases relating to any offence under **PMLA**.

A copy of the **PMLA** is enclosed at Annexure-I.

1.3 In regard to implementation of sub-paragraph 1 (a), could India please identify which Indian agency is in charge of receiving and analyzing reports on suspicious transactions, including transactions allegedly linked with the financing of terrorism? What powers have been entrusted to the agency with a view to dealing with those reports?

The Central Economic Intelligence Bureau (CEIB) is the apex organization for receiving and analyzing information pertaining to economic intelligence. The CEIB was set up in 1985 for coordinating/strengthening intelligence gathering activities, investigation and enforcement of economic offences and laws by various agencies. The CEIB liaises with the concerned departments at the Central and State levels. The CEIB analyses all reports pertaining to economic intelligence received from different agencies, such as the Central Board of Direct Taxes, the Central Board of Excise and Customs etc., that are in charge of receipt/analyses of suspicious transaction reports (STRs). In the banking system, under the direction of the Reserve Bank of India (India's Central Bank), various banks (regional headquarters and headquarters) receive and analyze these reports.

1.4 Sub-paragraph 1 (a) of the Resolution, as well as Article 18 of the International Convention for the Suppression of the Financing of Terrorism, require financial institutions and other intermediaries to identify their clients and to report suspicious financial transactions to the relevant authorities. In this regard, could India provide the CTC with an outline of the legal provisions which enable it to meet those requirements in full? The CTC would welcome an outline of the legal provisions which oblige financial intermediaries (such as lawyers, accountants, notaries and other professionals, when engaged in financial transactions) to report suspicious transactions to the relevant authorities. The CTC would also appreciate receiving an outline of the relevant legal provisions as regards Offshore Banking Units and bureaux de change. In the absence of such provisions, the CTC would ask India to indicate the steps, which it intends taking in order to comply in full with this aspect of the Resolution. The CTC would also appreciate receiving an outline of the criteria used to determine what constitute suspicious transactions under India law.

Chapter IV of the Prevention of Money Laundering Act (**PMLA**) deals with the obligations of banking companies, financial institutions and intermediaries. Section 12 of the **PMLA** requires every banking company or financial institution and intermediary to maintain a record of all transactions, the nature and value of which may be prescribed whether it is a single transaction or series of transactions integrally connected to each other and where such series of transactions take place within one month, furnish such information to the Director (appointed under the **PMLA**) within the time prescribed. These records shall be maintained for five years from the date of cessation of the transaction. Further, when the principal officer of the banking company, financial institution and intermediaries has reason to believe that such transaction is valued below the prescribed value, he shall furnish such information to the Director within the prescribed time. If the Director finds during the enquiry that the provisions of Section 12 of the Act have been contravened then, without prejudice to any other action that may be taken under the Act, he may, by order, levy a fine which shall not be less than Rupees 10,000 (approximately US$ 200) - but may extend to Rupees 100,000 (approx. US$ 2000) for each failure. Thus it is mandatory for the banking company, financial institutions and intermediaries including insurance companies to comply with the provisions of the Act.

Bureaux de Change are also covered under the Prevention of Money Laundering Act.

Section 14 of **PMLA** provides for protection of banking companies, financial institutional, intermediaries and their officers from any civil proceedings for the act of furnishing information under the **PMLA.**

Individual cash transactions over Rupees 10 million (approx. US$ 200,000) each and all suspicious transactions have to be reported by Banks.

1.5 The CTC notes from India's supplementary report that the Foreign Exchange Regulation Act and the Foreign Exchange Management Act prohibit receiving and distributing payments throughout India without the permission of the Reserve Bank of India. In this regard, has India introduced legal provisions to regulate money remittance/transfer services, including informal money or value transfer systems (such as Hawala)? Is there a requirement to license or register those services? Must they identify their customers and report any suspicious transactions to the competent authorities? In the absence of such provisions, could India indicate the steps which it intends taking in order fully to comply with this aspect of the Resolution?

Hawala transactions (Informal Money Transfer Systems) are not permitted under the Foreign Exchange Management Act (FEMA) and are illegal. India has consistently taken the stand that "registration" of Hawala is an oxymoron as Hawala transactions, especially those relating to terrorist activities are, by their very nature, clandestine. The system is so largely based on trust that licencing or registration cannot succeed. The solution for eliminating/reducing Hawala is to extend regular money transfer services, making them more customer-friendly and accessible. Our response to the suggestions for regulating the 'informal' money transfer (Hawala) has been presented before various international fora on several occasions. In fact, we have consistently maintained that 'informal' cross border money transfers violate the provisions of FEMA and are therefore, illegal. Our position regarding informal value transfer/Hawala has been that since it is an illegal activity it can only be curbed and cannot be regulated.

Wire Transfer Services are allowed in India only after the concerned banking/non-banking entity registers with the Reserve Bank of India, and regular reports are received for this. The Suspicious Transactions Reporting system has still not been fully introduced in this sector but should become operational once the Financial Intelligence Unit (FIU), (being set up under the Department of Revenue, Ministry of Finance), becomes fully functional.

For other forms of remittances such as use of banking channels for money remittances, under the 'Money Transfer Service Scheme' (MTSS), a licence is required from the Reserve Bank of India, before a banking/non-banking entity can receive instructions from an overseas money transfer service provider to transfer amounts up to a certain limit to the beneficiaries. Any money transfer service carried out in India by any other agency without proper licence is illegal.

A copy of the Reserve Bank of India's guidelines on the registration of wire transfer services is enclosed at Annexure-II.

1.6 In relation to money laundering and the financing of terrorism, could India provide an outline of any special strategy which it may have developed with a view to enabling its investigative agencies effectively to prevent resources from being transferred to terrorists (for example, through the under-invoicing of exports and the over-invoicing of imports, through the manipulation of real estate transactions and that of high value commodities such as gold, diamond and etc.)

Apart from **PMLA** and Prevention of Terrorism Act (POTA), the Government of India has enacted Foreign Exchange Management Act (**FEMA**), 1999 as a successor to the Foreign Exchange Regulation Act, 1973. The provisions of **FEMA** aim at preventing resources, either by way of under-invoicing of exports and over-invoicing of imports, from being transferred to undesirable elements including terrorists. Section 3 of **FEMA** prohibits dealings in foreign exchange etc. It lays down that:

"3. Save as otherwise provided in this Act, rules or regulations made thereunder, or with the general or special permission of the Reserve Bank, no person shall -

(a) deal in or transfer any foreign exchange or foreign security to any person not being an authorized person;

(b) make any payment to or for the credit of any person resident outside India in may manner;

(c) receive otherwise through an authorized person, any payment by order or on behalf of any person resident outside Indian in any manner;

Explanation - For the purpose of this clause, where any person in, or resident in, India receives any payment by order or on behalf of any person resident outside India through any other person (including an authorized person) without a corresponding inward remittance from any place outside India, then, such person shall be deemed to have received such payment otherwise than through an authorized person;

(d) enter into any financial transaction in India as consideration for or in association with acquisition or creation or transfer of a right to acquire, any asset outside India by any person.

Explanation - For the purpose of this clause, "financial transaction" means making any payment to, or for the credit of any person, or receiving any payment for, by order or on behalf of any person, or drawing, issuing or negotiating any bill of exchange or promissory note, or transferring any security of acknowledging any debt."

Section 4 of FEMA 1999 restrains any person resident in India from acquiring, holding, owning, possessing or transferring any foreign exchange, foreign security or any immovable property situated outside India except as specifically provided in the Act; while Section 7 deals with exports of goods and services. The Enforcement Directorate mandate includes acquisition of foreign currency illegally by person in India, non-repatriation of the proceeds of the exported goods, siphoning off of foreign exchange against fictitious and bogus imports, illegal acquisition of foreign exchange through Hawala etc.

1.7 In the context of the effective implementation of sub-paragraph 1 (a) of the Resolution, please explain the rules for identifying persons or entities which maintain bank accounts; or on whose behalf a bank account is maintained (i.e. the beneficial owners); or who are the beneficiaries of transactions conducted by professional intermediaries; as well as any other person or entity connected with a financial transaction. Are there any identification obligations imposed on customers who operate trusts with a view to obtaining information about the trustees, settlers/grantors and beneficiaries? Please outline any procedures which enable foreign law enforcement agencies or other counter-terrorist entities to obtain such information in cases where terrorist links are suspected.

The Reserve Bank of India (RBI) has issued 'Know Your Customer' (KYC) guidelines to banks in August, 2002 requiring all banks, inter alia, to verify the identity of the customer on the basis of reliable documents or through introduction by an existing account holder or a person known to the bank. In November, 2003, the RBI instructed all banks to ensure that customer identification for all existing accounts is also carried out on the basis of reliable documents within a fixed time frame. The issue relating to the identity of the beneficial owners is being examined. Under the Indian Trusts Act, 1882, it is mandatory for the trustees to give their name and addresses that are to be verified by a witness. Similarly under the Societies Registration Act, 1860, it is mandatory to disclose the names and addresses of the members and office bearers of the society.

The draft Rules under the Prevention of Money Laundering Act (**PMLA**), 2002 are in the process of being finalized by the Department of Revenue, Government of India and some of these issues including the arrangement for sharing the information with external agencies are expected to be addressed in the Rules. Sections 56, 57, 58 and 59 of the **PMLA**, 2002 are relevant in this regard.

So far as the issue of assistance to foreign law enforcement agencies in respect of individuals having terrorist links is concerned, such assistance including mutual legal assistance may be extended through the existing bilateral mutual legal assistance treaties or under general provisions of the Criminal Procedure Code, 1973.

1.8 As regards the implementation of sub-paragraphs 1 (a) and (c) of the Resolution, as well as Article 8 of the International Convention for the Suppression of the Financing of Terrorism, the CTC would be grateful if India could indicate the magnitude of the financial assets frozen, seized and confiscated in relation to the prevention of financing of terrorism.

Various assets suspected to be linked to terrorist financing have been seized under the Income Tax Act and Prevention of Terrorism Act (**POTA**) and are under disposal. While three bank accounts were frozen under **POTA**, no money was found in these accounts. It has been found that terrorist financing in India is mostly conducted through informal channels such as Hawala, Fake Indian Currency Notes (FICN), drug smuggling, etc.

As to the magnitude of financial assets frozen/confiscated in relation to the International Convention for the Suppression of the Financing of Terrorism, so far we have not detected any accounts relating to the terrorist entities included in the relevant UN Security Council resolutions. Prior to September 2001, two accounts of the Ariana Airlines were frozen, pursuant to the decision of the UN Security Council.

In addition a small number of bank accounts were also frozen under Indian domestic laws. However, no significant amount of money was found in these accounts and it is the assessment of Indian authorities that terrorists do not maintain accounts in their own names and their preferred source of financing is through informal channels. (This aspect has also been highlighted elsewhere in this report).

1.9 With regard to the effective implementation of paragraph 1 (d) of the Resolution, please indicate the number of cases in which India has taken judicial action against non-profit organizations on account of their suspected involvement in the financing of terrorism? Has India frozen the assets of any non-profit organization because of their links with terrorist groups or terrorist activities? The CTC would also welcome receiving examples of cases in which sanctions were imposed on those terrorist organizations. In regard to the auditing and monitoring of the collection and use of funds by charities, how does India coordinate the work of the various bodies entrusted with this work?

Financing of terrorism is an offence under the Prevention of Terrorism Act (POTA) which is implemented by the Ministry of Home Affairs and its subsidiary agencies. Government of India has recently issued an enabling notification to facilitate implementation of Security Council resolutions under India's United Nations Security Council Act. This is expected to further strengthen action against organizations in the future.

Over 30 organizations have been banned under the POTA. The procedure for proscribing organizations is laid down in Section 18 of POTA.

As far as overseas donations to charities are concerned, applications received by the Ministry of Home Affairs (MHA), are duly scrutinized and field enquiries conducted by the concerned agencies for establishing the genuineness of both the organization and the professed aims/objectives. If claims are found to be genuine, permission is accorded for making donations under the Foreign Contributions Regulatory Act (FCRA). The coordination of the work of various bodies is undertaken by a nodal unit in the Ministry of Home Affairs.

1.10 As regards the implementation of sub-paragraph 1 (a) and (d), could India please provide the CTC with statistics on the number of cases where sanctions for providing support to terrorists or terrorist organizations were imposed on:

- financial and non-financial institutions;

- financial intermediaries.

Action on specific cases of providing support to terrorists or terrorist organizations is taken under relevant laws, including Prevention of Terrorism Act (POTA), and the Indian Penal Code (IPC). In January 2004, the Government of India issued an Order, under the UN Security Council Act 1947, empowering the Central Government to take measures to give effect to Resolutions 1267, 1333, 1390 and 1455 adopted by the United Nations Security Council requiring all States to take measures to combat international terrorism to:

(a) prevent and suppress the financing of any terrorist act;

(b) prohibit any willful provision or collection, directly or indirectly, of funds by any individual or entity whether in or outside India, with the intention of using such funds or having the knowledge that they shall be used to carry out any terrorist act;

(c) freeze, seize or attach funds and other financial assets or economic resources, held by or on behalf of the individuals or entities listed in the Schedule;*

(d) prohibit any individual or entity from making any funds, financial assets or economic resources or financial or other related services available directly, or indirectly, for the benefit of individuals or entities listed in the Schedule;

(e) prevent the entry into or the transit through India of individuals listed in the Schedule;

(f) prevent any direct or indirect supply, sale and transfer, in or outside India, of arms and ammunition and other related materials to the individuals or entities listed in the Schedule.

*(Taliban/Al Qaeda Sanctions list of the 1267 Committee.)

No information is available with regard to cases where sanctions had to be applied on institutions for supporting terrorist actions.

Effectiveness of counter-terrorism machinery

1.11 Effective implementation of 1373-related legislation covering all aspects of the Resolution requires States to have in place effective and coordinated executive machinery as well as to create and utilize adequate national and international anti-terrorist strategies. In this context, does India's counter-terrorism strategy and/or policy targeting (at national and/or sub-national level) deal with the following forms or aspects of counter terrorist activity:

- **Criminal investigation and prosecution;**

- **Counter-terrorist intelligence (human and technical);**

- **Special forces operations;**

- **Physical protection of potential terrorist targets;**

- **Strategic analysis and forecasting of emerging threats;**

- **Analysis of efficiency of anti-terrorist legislation and relevant amendments;**

- **Border and immigration control, control preventing the trafficking in drugs, arms, biological and chemical weapons, their precursors and the illicit use of radioactive materials;**

- **Coordination of provincial agencies in all those areas.**

If possible, could India please outline the legal provisions and other administrative procedures as well as the best practices in this regard?

Under the Constitution of India, public order and police, (Entries 1 and 2 of List II of the Seventh Schedule of the Constitution of India), are responsibilities of states (provinces). At the same time, the Constitution confers on the Union the responsibility to protect every state (province) against

external aggression and internal disturbances, and to ensure that the government of every state is carried on in accordance with the provisions of the Constitution. In pursuance of these obligations, the Union Ministry of Home Affairs extends manpower and financial support, guidance and expertise to state governments for the maintenance of security, peace and harmony without infringing upon the constitutional rights of states.

In India investigation and prosecution of all types of crimes including terrorist cases are, therefore, dealt with by the state police & state prosecution machinery. Most states have formed Anti-Terrorist Cells/Special Operational Groups/Special Task force to deal with terrorist activity within their jurisdiction.

A Multi Agency Centre (MAC) has been set up in the Ministry of Home Affairs for coordinating counter-terrorism efforts. The Centre pools, processes and disseminates actionable intelligence and converts raw intelligence into actionable intelligence on terrorist activities in the country.

States have formed Special Operational Groups/Special Task Force/Special Intelligence Cell to conduct operations against terrorists. There are also specialized well-trained security forces at Central Government level for dealing with grave & difficult situations. The intelligence agencies at state & national level and the Multi Agency Centre analyze and forecast the emerging threats. Central Government & State Governments review the efficiency of counter terrorism measures from time to time to strengthen and streamline their efforts.

To check illegal migration, infiltration of terrorists, and trafficking in drugs, arms and other contraband across India's international borders, the Government of India has a system of border control in place. India has implemented stringent immigration controls which utilize necessary data bases to check for terrorists/criminals and to prevent trafficking of drugs. India has comprehensive legislation in place, namely the Narcotics Drugs & Psychotropic Substance Act, 1985 to regulate and control drugs and psychotropic substances as well as their precursors. This law covers both domestic as well as international trafficking in these substances. The Act also empowers custom authorities to interdict and seize narcotic drugs and psychotropic substances and their precursors and prosecute offenders. The Border Security Force also has powers to seize narcotic drugs and psychotropic substances and precursor chemicals being trafficked across India's international borders. A number of state agencies including state police have been empowered to enforce the provisions of the Act. A special agency, namely, Narcotic Control Bureau has also been created both to enforce the provisions of the Act as well as to coordinate among the various central and state agencies which are empowered under the Act.

Under Indian Arms Act, 1959, the illegal possession, transit, sale of arms/ammunition is punishable. Prevention of Terrorism Act, 2002 contains provisions penalizing the unauthorized possession of arms/ammunitions, bombs, dynamites or hazardous explosive substances or other lethal weapons capable of mass destruction or biological/chemical substances of warfare. Criminal intelligence departments & officers of the level of Director General of Police coordinate the function of various investigation agencies in the State.

Counter-terrorism intelligence is collected by the Special Branches of State Police as well as Intelligence & Security Agencies at central level. These organizations use both human intelligence & technical intelligence to gather actionable intelligence against terrorists.

The Atomic Energy Act, 1962 contains provisions which prevent the illicit acquisitions, possession, disposal, export, import of radioactive substances and whoever contravenes any provisions of the Act can be punished with imprisonment and fine. India is also party to the Convention on Physical Protection of Nuclear Material (CPPNM). India also co-sponsored the Resolution on the 'Code of Conduct on the Safety and Security of Radioactive Sources' adopted at the last IAEA General Conference.

For streamlining intelligence efforts, the Intelligence Bureau (IB) has been designated as the nodal agency for counter terrorism. In order to optimize intelligence flows and coordination between multifarious agencies in the field of counter terrorism, a Multi Agency Center (MAC) has been created in the Intelligence Bureau at New Delhi supported by subsidiary Multi Agency Centers at state levels. The Joint Task Force on Intelligence (JTFI) in the IB has been created for coordinating and synergizing the efforts of the intelligence wings of the central police organizations and special branches of the state police forces. The JTFI is supported by inter-state Intelligence support teams (ISISTs) meant for dealing with internal security threats concerning more than one state. The states have been requested to streamline and strengthen the special branches to be able to make full use of this mechanism.

In order to sensitize the state governments to the emerging threats in the internal security scenario and to ensure a coordinated approach for tackling the problems pertaining to internal security, two conferences, one of the Chief Secretaries and Director Generals of Police of States and the other of the Chief Ministers of states are now held every year.

The proper and effective management of borders is vitally important for national security, particularly cross border terrorism. The steps taken by the Government in this regard include additional raising of Border Guard Forces, deployment of hi-tech electronic surveillance equipments on the borders to act as force multiplier for effective border management, a pilot project for issue

of multi purpose national identity cards in some states and Union Territories on an experimental basis, detection and deportation of illegal immigrants, a perspective plan for integrated infrastructure development of border areas and action plan to strengthen the coastal security.

Mutual Legal Assistance Treaty (MLAT) in Criminal Matters facilitate the widest measures of mutual assistance in the service of summons, execution of warrant and other judicial documents and improve the effectiveness of both countries in the suppression of crime, investigation, prosecution of crime related to terrorism and tracing, restraint, forfeiture or confiscation of proceeds and instruments of crime through cooperation. India has signed agreements on MLAT with a number of countries.

India has established Joint Working Groups on Counter Terrorism with a number of countries to exchange information and strengthen international cooperation to combat terrorism.

1.12 The CTC would be grateful if India could please provide it with information concerning its counter terrorist efforts including, inter alia, an outline of targeted programs, the agencies involved as well as a description of the coordination mechanisms utilized by the agencies charged with implementing the provisions of Paragraph 2 and 3 of the Resolution. The CTC is particularly interested in the following areas:

- the recruitment to terrorist groups:

- the tracing of links between criminal activities (in particular, drug trafficking) and terrorism;

- the prevention of the establishment of terrorist safe havens and other forms of passive or active support for terrorists or terrorist groups, including inter alia, logistic support of terrorists (e.g. using of global information infrastructure).

The Multi-Agency Center (MAC) and Subsidiary Multi-Agency Centers led by the Intelligence Bureau have been established for sharing information among various agencies including linkages between criminal activities such as drug trafficking and terrorism. In the event of any information gathered during drug investigations pointing to the financing of terrorist through drug trafficking, institutional arrangements exist for sharing of such information and for acting upon it. Similarly, information on cases involving joint seizures of arms, ammunition, explosives and drugs is also shared with concerned agencies.

Coordination mechanism has also been described at 1.11 above.

The details of targeted programs cannot be provided for reasons of confidentiality.

1.13 In the context of the effective implementation of sub-paragraph 2 (e), the CTC notes that the Prevention of Terrorism Act (2002), contains legal provisions concerning the interception of communications. Please indicate whether special investigative techniques can be used in India in cases of terrorism (e.g. observation; undercover operations; controlled delivery; "pseudo-purchases" or other "pseudo-offences", etc.). Please explain what these techniques consist of as well as the legal conditions which govern their use (especially, whether they may only be applied to suspects, whether they may only be applied if approved by a court, the period for which they may be used, etc.). Could India indicate whether those techniques can be used in cooperation with another State?

Special investigative techniques such as surveillance, undercover operations, etc. are used in India in cases of terrorism as well as other serious offences. Techniques such as "pseudo-purchases" or "pseudo-offences" are not backed by any legal provision. "Controlled delivery" has been legalized under the Narcotics Drugs & Psychotropic Substance Act, 1985. The provision under the Act is as follows:

> "Controlled delivery" means the techniques of allowing illicit or suspect consignments of narcotic drugs, psychotropic substances, out of, or through or into the territory of India with the knowledge and under the supervision of an officer empowered in this behalf or duly authorized under section 50-A with a view to identifying the persons involved in the commission of an offence under the Act."

Cooperation with another State in investigative techniques is a matter of bilateral understanding. The details cannot be gone into because of confidentiality.

1.14 The CTC noted from sub-paragraph 30 (1) of the Prevention of Terrorism Act (2002) that it has procedures in place aimed at protecting witnesses. In this regard, please indicate whether India has taken measures to protect persons who are vulnerable in the prosecution of terrorist cases (e.g. protection of the victims, of collaborators of justice, of judges and prosecutors)? Please describe the legal and administrative provisions in place to ensure this protection. Could India please indicate whether these measures can be utilized in cooperation with or at the request of another State?

The Constitution of India enjoins upon the State to protect the life & liberty of its citizens. The protection of witnesses as per provisions of Prevention of Terrorist Act (**POTA**), 2002 includes in-camera trials, keeping the identity & address of witnesses' secret, not mentioning the names and addresses of the witnesses in orders or judgments or in any records of the case accessible to public. In case of danger to the life of witnesses, judges, prosecutors, the State Police provide adequate police protection.

As per Section 3(7) of **POTA** 2002, whoever threatens any person who is a witness or any other person in whom such witness may be interested, with violence, or wrongfully restrains or confines the witness, or any other person in whom the witness may be interested, or does any other unlawful act with the said intent, shall be punishable with imprisonment which may extend to three years and fine.

State police organizations after assessing the threat perception makes adequate arrangements to protect individuals. These measures can also be utilized in co-operation with or at the request of another State to the extent it is specifically provided under mutual legal assistance agreement.

1.15 In regard to the effective implementation of sub-paragraphs 1 (d) and 2 (e) of the Resolution, as well as of Article 5 of the International Convention for the Suppression of the Financing of Terrorism, please indicate whether India has introduced measures to establish the civil, criminal or administrative liability of legal persons for criminal offences, in particular offences related to terrorist activities? Please specify and provide an outline of the relevant legal provisions. Is it possible to assign liability to the legal person when no natural person has been convicted or identified?

The answer below should be read along with answer to question 1.2. As per the Prevention of Money Laundering Act (PMLA), 2002 and the Foreign Exchange Management Act (FEMA), person has been defined as "persons including an individual, a Hindu undivided family, a company, a firm, an association or persons or a body of individuals, whether incorporated or not, every artificial juridical person, not falling within any of the preceding sub-clauses, and any agency, office or branch owned or controlled by any of the above persons mentioned in the preceding sub-clauses".

Similarly, the term 'person' in the Indian Penal Code (IPC) includes any company, or an association, or a body of person, whether incorporated or not. This definition is applicable wherever the term 'person' is used in Criminal Procedure Code, Prevention of Terrorism Act (POTA), 2002 and Narcotics Drugs and Psychotropic Substance Act, 1985.

1.16 The CTC noted from the third report of India (page 7) that legislation to implement the Convention on the Marking of Plastic Explosives is in

process. In this regard, the CTC would be content to receive a progress report on the enactment of the relevant legislation, as well as on the steps taken by India to implement the International Convention for the Suppression of the Financing of Terrorism to which India has recently become a party.

In India, plastic explosives are not manufactured in the civilian sector. They are manufactured only in Defence Organizations which are exempted under Section 14 of the Explosives Act. Separately the Explosive Rules, 1983 are being revised to incorporate the provisions on the marking of plastic explosives. The manufacture, possession, sale, import, transport etc. of explosives is controlled and regulated.

The legislation to implement the Convention on the Marking of Plastic Explosives is under process.

Sections 6-17 of the Prevention of Terrorism Act (POTA) cover the entire gamut of financing of terrorism activities. The activities and channels relating to money laundering and informal movement of funds are regulated under the Prevention of Money Laundering Act (PMLA), the structure for implementation of which is under process. Other specific laws have also been used, description of which have been provided in our earlier reports to the CTC. As far as detection of cases and disruption of financing channels are concerned, those based on intelligence driven investigations and prosecution is undertaken under the relevant laws.

1.17 Effective implementation of sub-paragraph 2 (a) of the Resolution requires each Member State, inter alia, to criminalize the recruitment to terrorist groups within its territory, whether the terrorist groups are operating within its territory or abroad. From previous report, it is not clear whether India law contains special provisions in this regard. In particular, it is not clear whether any of the provisions in India law address the following situation i.e.: the recruitment of persons in India with a view to undertaking terrorist activities in other countries. It is worth noting, in this respect, that this form of recruitment is sometimes based on a falsehood or deception. For example, persons may be recruited to work as teachers, although the real purpose of their recruitment may be very different. The CTC would be grateful for an outline of the legal provisions which will enable India to meet the requirements of this aspect of the Resolution. In their absence, the CTC would appreciate receiving an indication from India as to the steps which it intends taking in order to comply with this aspect of the Resolution.

The answer to this question is partly covered in the answer provided to question 1.11.

Under Section 1.4 of the Prevention of Terrorism Act (POTA), "any person who commits an offence beyond India which is punishable under this Act shall be dealt with according to the provisions of this Act in the same manner as if such act had been committed in India".

Under Section 18 (4) of the Prevention of Terrorism Act, an organization shall be deemed to be involved in terrorism if it –

(a) commits or participates in acts of terrorism,
(b) prepares for terrorism,
(c) promotes or encourages terrorism, or
(d) is otherwise involved in terrorism.

Section 4 of Indian Penal Code also provides for applications of Indian Penal Code in cases where any citizen of India commits offences in any place without and beyond India. The Indian Penal Code also deals with the cases of waging war against other Governments at peace with the Government of India. (Sections 125-127).

As far as criminalizing recruitment to terrorist groups Section 3 (3) of the Prevention of Terrorism Act provides that "Whoever conspires or attempts to commit, or advocates, abets, advises or incites or knowingly facilitates the commission of, a terrorist act or any act preparatory to a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine."

1.18 With regard to the implementation of sub-paragraphs 2 (a) and (d), India in its third report refers (at page 6) to sections 2, 3, 4, 121, 121A, 122 and 123 of the Indian Penal Code. The CTC notes that those legal provisions do not appear adequately to meet the requirements of the above mentioned sub-paragraphs. In particular, the provisions would appear inadequate to prevent the activities of those who use the territory of India to finance, plan, facilitate or commit terrorist acts against other States or their citizens. The CTC would appreciate receiving an outline of the legal provisions, if any, which enable India to meet these requirements. In their absence, could India indicate the steps which it intends taking to remedy the situation?

The existing provisions in Indian Penal Code and other legislations are found adequate to deal with the cases of financing, planning, facilitating or committing terrorist acts against other state or their citizens. It may also be noted that any case of intended hostile activity against a foreign Government will be dealt with by the Indian intelligence, administrative and police machinery effectively.

1.19 In the context of the effective implementation of sub-paragraph 2 (e), could India provide the CTC with information relating to the number of persons prosecuted in India for:

- terrorist activities;

- the financing of terrorist activities;

- recruiting to terrorist organizations;

- providing support to terrorists or terrorist organizations.

How many of these persons have been prosecuted for inviting support (including recruitment) for:

- proscribed organizations; and

- other terrorist groups or organizations?

Please outline the procedure used to proscribe foreign terrorist organizations (other those listed by the Security Council), as well as data as regards the number of organizations involved and/or corresponding examples. How long does it take to proscribe a terrorist organization at the request of another State or based on information supplied by another State?

As far as the spectrum of terrorist activities is concerned, they include covert activities, open activities, charitable activities, etc. As and when information is received about such activities, proper investigation and action is undertaken. Given the diversity of different types of such activities, a wide range of laws are applied including the Indian Penal Code, Indian Arms Act, Indian Explosives Act, Public Security Act, Public Safety Act, Prevention of Terrorism Act, Prevention of Money Laundering Act etc. Since these also cover general criminal activities involving use of firearms, explosives, and other violent means, it is difficult to segregate which cases are specifically terrorist activities from those which are directly related to such crimes. Also given the wide dispersal of cases over different parts of the country, it is difficult to collate figures.

If the Government of India believes that an organization is involved in terrorism, it can list such an organization in the Schedule of the Act, proscribing it as a terrorist organization in accordance with Section 18(3) of the Prevention of Terrorism Act (POTA).

Effectiveness of customs, immigration and border controls

1.20 Effective implementation of sub-paragraphs 2 (c) and (g) of the Resolution requires the enforcement of effective customs, immigration and border controls so as to prevent the movement of terrorists and the establishment of safe havens. In this regard, please outline the legal and administrative procedures developed by India in order to protect its port facilities and ships, persons working in those port facilities and ships, cargo, cargo transport units as well as ships' stores from the risks of a terrorist attack. Have the competent Indian authorities put procedures in place to review and up-date transport security plans periodically? If yes, please outline.

The legal provisions contained in the Indian Ports Act, 1908 are applicable for protecting port facilities and ships, persons working in those port facilities and ships, cargo, cargo transport units as well as ships' stores from the risks of a terrorist attack. An internal security apparatus is maintained at Indian Ports by the concerned Port Authorities as well as by the State Police. Some of the major ports are provided additional security by the Central Industrial Security Force. Government of India has designated the Indian Register of Shipping (IRS) as the nodal agency to implement the International Ship and Port Facility Security (ISPS) Code. Accordingly, IRS inspects all ports and sends its reports to the Ministry of Shipping on a regular basis for taking necessary action. Transport security is periodically reviewed in accordance with the prescribed procedures.

As the provisions of the Passport (Entry into India) Act, 1920 and the rules framed under it, every person, (except for nationals of Bhutan and Nepal), are required to be in possession of valid travel documents for entry into India. In case of a foreigner, a valid visa issued by a competent authority is required for entry into India. Entry into India is allowed only from specified entry points (immigration check-posts). Any person found entering into India without travel documents is arrested and handed over to the local police for taking further necessary action. Persons arrested for entering into India without travel documents or from unspecified points are liable to be awarded imprisonment up to a period of five years or with fine or with both. Persons who repeat the violation are liable to be awarded double the penalty prescribed for such violation. The stay and movement of foreigners inside the country is also governed by other Acts viz. Foreigners Act, Registration of Foreigner Act etc. and rules made there under.

Every foreigner who enters India with validity of their visa exceeding more than 180 days is required to register himself/herself with the concerned Foreigners' Registration Office within 14 days of his/her arrival in India.

1.21 In the context of the implementation of sub-paragraphs 2(b) and (j), has India implemented the standards and recommendations of the International Civil Aviation Organization (Annex 17)? Please inform the CTC

as to whether ICAO has conducted a safety audit of India's international airports.

All standards of Annexure-17 to the Chicago Convention on International Civil Aviation are implemented at all civilian airports in India through clearly laid out rules and regulations, standard practices and procedures. Matters pertaining to safety and security of airports in India are within the purview of the Directorate General of Civil Aviation (**DGCA**). The Bureau of Civil Aviation Security (BCAS), an attached office of the Ministry of Civil Aviation headquartered in New Delhi, is responsible for laying down the standards of pre-embarkation security and anti-sabotage measures in respect of civil flights in India. Actual enforcement on the ground is entrusted to the respective local Police. The Bureau is headed by an Officer of the rank of Director General of Police designated as Commissioner of Security, Civil Aviation (COSCA). It has 4 (Four) Regional Offices in Delhi, Calcutta, Mumbai and Chennai. Officers of the Bureau visit airports from time to time to monitor the enforcement.

The International Civil Aviation Organization (**ICAO**) has not yet conducted safety audit of India's interr tional airports. However, aerodrome license audit inspection of Kolkata and Chennai airports have been carried out by DGCA officials under the auspices of European Association of Aerospace Industries (EU/AECMA) - India Civil Aviation Project. Further, safety audits of Delhi and Mumbai airports have been carried out in association with the Cooperative Development of Operational Safety and Continued Airworthiness Project (COSCAP) experts and action is in progress in respect of airports at Ahmedabad and Hyderabad. **ICAO** audit is likely to follow sometime in August/September 2004.

Effectiveness of controls preventing access to weapons by terrorists

1.22 Effective implementation of sub-paragraph 2 (a) of the Resolution requires each Member State, inter alia, to have in place an appropriate mechanism to deny access to weapons to terrorists. With regard to this requirement of the Resolution as well as to the provisions of the Convention on the Marking of Plastic Explosives for the purpose of Detection and the International Convention for the Suppression of Terrorist Bombings please provide the CTC with information relevant to the following questions:

- What national laws, regulations and administrative procedures exist to exercise effective control over firearms, ammunitions, explosives in following areas:

- **production;**
- **acquisition;**

- transit;
- retransfer?

- What national measures exist to prevent the manufacture, stockpiling, transfer and possession of unmarked or inadequately marked:

- **Small and light weapons;**
- **Other firearms, their part and components and ammunition;**
- **Plastic explosives;**
- **Other explosives and their precursors**

- Please specify procedures of export control and existing mechanism of exchange of information of sources, routs and methods of traders in arms.

- Has India's Custom Service implemented intelligence-based risk management on borders to identify high-risk goods? Please outline data elements required by Customs Administrations to identify high risk consignment prior to shipment.

- Has India implemented, using risk assessment principles, any special security measures on the import, export and transit movement of firearms, such as conducting security checks on the temporary storage, warehouses and means of transport carrying firearms, and requiring persons involved in these operations to undergo security vetting? If yes, please give details.

India has comprehensive legislation to exercise effective control over firearms, ammunitions, explosives etc, in the form of the Arms Act, 1959 and rules made there under.

The Government of India took a policy decision regarding manufacturing activity in this area wherein it was decided that only those manufacturers would be allowed to continue their work whose units existed before independence of the country in 1947.

As per the existing provisions of the Arms Act, 1959, no person can acquire, possess, or carry firearms or ammunition without holding a licence issued under the Act. Also with a view to put stringent control over transfer/ re-transfer of the firearms/ammunition, the Act provides that no person shall

provide, obliterate, remove, alter, forge any name, number or any other identification mark or stamp or otherwise, shown on the firearms. No one is permitted to sell/ transfer any firearm which does not bear the name of the maker, manufacturer's number or other identification mark or stamp, in the approved manner. Every firearms dealer has to maintain registers in the prescribed manner, indicating receipt, disposal, and balance of stock in hand and daily sales of arms/ammunition of different categories etc.

The Arms Act, 1959 along with the Arms Rules 1962 & The Arms Amendment Rules 1998 contains provisions to deal with illegal production, acquisition, transit, transfer, re-transfer etc. of arms of all kinds. Sections 3 to 12 & Section 25 to 33 are relevant in this context.

The manufacture, possession, sale import, transport etc. of explosives is controlled and regulated as per the provisions of Explosives Rules, 1983 framed under the Explosives Act, 1884. As per the provisions of Explosives Rules, 1983, no person can manufacture, possess, sell, transport, import, or export explosives without having proper licence/approval from the Department of Explosives. The Department of Explosives is the statutory authority under the Explosives Act to issue licence for manufacture, possession, and sale etc. of explosives after due clearances from security agencies and local authorities as per the procedures laid down in the statute.

As per the Arms Act, 1959, no person can deposit any arms/ ammunition in any warehouse without the approval of the Government. Where any arms or ammunition is found in any premises or vehicle or other place, the concerned person is liable to be punished for that offence as per the provisions of the Arms Act, 1959. Further, adequate powers have been delegated to officials for the purpose of ascertaining whether any contravention of the Act or the Rules made there under are being committed. In these circumstances, the competent authority is authorized to stop and inspect any vessel or vehicle or other means of conveyance and seize them.

The Directorate General of Customs and Central Excise is committed to install a Risk Management Module based on all identifiable risk parameters, including intelligence, in respect of imported cargo, at 23 Indian Customs Electronic Data Interchange System (ICES) locations by June, 2004. A similar Risk Management Module for export goods has been developed and will be commissioned at all 23 ICES locations in the current year. The risk parameters in the Risk Management System have the provision to flash alert and generate specific direction regarding suspect goods, importers or exporters, and also cover security parameters. The risk management system is also designed to target invoice manipulation apart from other relevant factors.

India's domestic policy on Small Arms and Light Weapons is statutorily regulated under The Arms Act, 1959 and The Arms Rules, 1962, as amended

from time to time, which cover all aspects of lawful possession, manufacture, sale, transfer, transport, export, import of arms and ammunition and provide penal provisions for their violation. In addition to The Arms Act, 1959 and The Arms Rules, 1962, the Government of India has enacted other laws providing for penal provisions related to illegal possession, manufacture, etc. of small arms and light weapons which include Prevention of Terrorism Act (2002), Armed Forces (special powers) Act, Indian Penal Code, The Army Act and analogous laws.

All small arms manufactured in India have to be invariably proof-tested and bear identification mark stamping before their sale, as per the statutory provisions under the Arms Act, 1959. The Arms Act, 1959 provides that arms which do not bear specified identification marks may not be sold or transferred. Further, any person found in possession of a weapon without identification marks would be presumed to have removed/obliterated the marks unless proven otherwise and is liable to prosecution under the Arms Act, 1959.

The Central and State Police forces take action according to the provisions of the Arms Act, 1959 and the Arms Rules, 1962, and inter alia conduct routine checks to detect the cases of possession/manufacture/sale of small arms and light weapons. In case of any incident involving illicit arms, necessary action is taken by the concerned authorities under the provisions of the Arms Act and rules thereunder.

The Indian Customs Electronic Data Interchange System (ICES) has a self-contained mechanism to enforce existing regulatory instructions. In the event of import of such items by mis-declaration, the risk management system has been developed to alert Customs authorities against all such suspect consignments enabling detection, even if no prior intelligence is available with Custom authorities.

1.23 With regard to the effective implementation of sub-paragraph 2 (a), could India outline its mechanism and procedures as regards the implementation of the legal provisions or controls imposed on the export of goods; the transfer of technologies; the provision of technical assistance overseas; activities connected with the trade in controlled goods; with particular regard to denying terrorists access to weapons or hazardous materials. The CTC would appreciate it if India could provide it with statistics on the use of legal provisions to prevent terrorists from gaining access to weapons.

Through appropriate legislative, procedural and administrative measures, India has instituted an effective and comprehensive system to regulate strategic exports from India to ensure that these do not fall into wrong hands - whether state or non-state actors. Laws such as The Explosive

Substances Act, 1908; The Narcotic Drugs and Psychotropic Substances Act, 1985; The Environment Protection Act, 1986; The Atomic Energy Act, 1962; The Foreign Trade (Development and Regulation) Act, 1992; The Customs Act, 1962 form the legal basis of India's system of export controls. Various agencies of the Government are empowered to enforce the provisions of these laws.

With the objective of exercising control over the export of goods and technology of direct and indirect application to Weapons of Mass Destruction and the means of their delivery, the Government of India has specified a list of dual-use Special Chemicals, Organisms, Materials, Equipment and Technologies (SCOMET), the export of which is either prohibited or permitted only under license and the conditions included therein. This list is notified in Appendix 3 to Schedule II of the ITC (HS) Classifications of Export and Import Items, 2002-2007.

All munitions are manufactured or traded in by entities that are wholly owned, controlled by or are on contract to the Government of India. Legal and administrative measures are in place for regulating exports of military stores which are permitted only under written permission of the relevant agencies of the Government unless specified otherwise in the Government's Export Import Policy. This permission inter alia rests upon end-use and end-user certification on a government to government basis and is in conformity with the Government of India's foreign policy objectives, which includes a ban on exports to countries under UN embargo.

1.24 The CTC is aware that India may have covered some or all of the points in the preceding paragraphs in reports or questionnaires submitted to other organizations involved in monitoring international standards. The CTC would be content to receive a copy of any such report or questionnaire as part of India's response to these matters as well as details of any efforts to implement international best practices, codes and standards which are relevant to the implementation of resolution 1373.